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18 **UNITED STATES DISTRICT COURT**

19 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

21 CISCO SYSTEMS, INC.,

22 Plaintiff,

23 vs.

24 ARISTA NETWORKS, INC.,

25 Defendant.

CASE NO. 5:14-cv-5344-BLF

**DECLARATION OF MARK TUNG IN  
SUPPORT OF CISCO'S  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL CONFIDENTIAL  
INFORMATION IN CISCO'S AMENDED  
OPPOSITION TO ARISTA'S MOTION  
TO AMEND SCHEDULING ORDER OR,  
ALTERNATIVELY, TO STAY PATENT  
CLAIMS PENDING *INTER PARTES*  
REVIEW**

27 **DEMAND FOR JURY TRIAL**

28

**DECLARATION OF MARK TUNG**

I, Mark Tung, declare as follows:

1. I am an attorney licensed to practice in the State of California and am admitted to  
 2 practice before this Court. I am of counsel with the law firm Quinn Emanuel Urquhart & Sullivan,  
 3 LLP, counsel for Plaintiff Cisco Systems, Inc. (“Cisco”). I have personal knowledge of the  
 4 matters set forth in this Declaration, and if called as a witness I would testify competently to those  
 5 matters.

6. I make this declaration in support of Cisco’s Administrative Motion to File Under  
 7 Seal Confidential Information in Cisco’s Amended Opposition to Arista’s Motion to Amend  
 8 Scheduling Order or, Alternatively, to Stay Patent Claims Pending *Inter Partes* Review in  
 9 connection with Cisco’s Amended Opposition to Arista’s Motion to Amend Scheduling Order or,  
 10 Alternatively, to Stay Patent Claims Pending *Inter Partes* Review (“Cisco’s Brief”).

11. Cisco’s Brief is non-dispositive. In this context, materials may be sealed so long as  
 12 the party seeking sealing makes a “particularized showing” under the “good cause” standard of  
 13 Federal Rule of Civil Procedure 26(c). *Kamkana v. City and Cnty. of Honolulu*, 447 F.3d 1172,  
 14 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122,  
 15 1138 (9th Cir. 2003)). In addition, Civil Local Rule 79-5 requires that a party seeking sealing  
 16 “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or  
 17 otherwise entitled to protection under the law” ( *i.e.*, is “sealable”). Civil L.R. 79-5(b). The  
 18 sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*  
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20. Pursuant to Civil L.R. 79-5(e), Cisco requests to seal the document identified  
 21 herein only because the information sought to be sealed has been directly designated by Defendant  
 22 Arista Networks, Inc. (“Arista”) as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
 23 under the Protective Order (Dkt. 53):

Document	Portions to Be Filed Under Seal
Cisco’s Amended Opposition to Arista’s Motion to Amend Scheduling Order or, Alternatively, to Stay	As highlighted in the version filed herewith, portions of page: 3

Patent Claims Pending  
*Inter Partes Review*

3       5. Cisco's Brief contains quotations from documents produced by Arista. Those  
4 documents are included as Exhibits 6 and 8 to the Declaration of Mark Tung in Support of Cisco's  
5 Opposition to Arista's Motion to Amend Scheduling Order or, Alternatively, to Stay Patent  
6 Claims Pending *Inter Partes* Review. Dkts. 114-1, 114-7, and 114-9. Cisco previously filed an  
7 administrative motion to file these exhibits under seal with a supporting declaration and with fully  
8 redacted versions and versions sought to be sealed of each exhibit. Dkts. 113, 113-1, and 113-4  
9 through 113-7. Arista designated these documents as "Confidential Business Information" in ITC  
10 Investigation Nos. 337-TA-944 and 337-TA-945. Under the Stipulated Protective Order  
11 governing this litigation, Dkt. 53 at 6 fn. 1, these documents are deemed to have been produced in  
12 this case as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." Accordingly, Cisco  
13 has narrowly redacted only those portions of its Brief containing information so designated by  
14 Arista. Specifically, Cisco has redacted the descriptions of and quotations from these Arista's  
15 documents in Cisco's brief. Redacted and unredacted highlighted versions of Cisco's Brief are  
16 attached hereto.

17       6. Cisco will serve a copy of this declaration on Arista the same day it is filed. Cisco  
18 expects that Arista will file the required supporting declaration in accordance with Civil Local  
19 Rule 79-5(e), as necessary, to confirm that the information contained in the above-referenced  
20 document should be sealed.

21 I declare under penalty of perjury under the laws of the State of California that the  
22 foregoing is true and correct, and that this declaration was executed in San Francisco, California,  
23 on November 19, 2015.

24  
25 */s/ Mark Tung*  
Mark Tung (Bar No. 245782)

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*/s/ Mark Tung*

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1                   **SIGNATURE ATTESTATION**

2                   Pursuant to Civ. L.R. 5-1(i)(3), the undersigned hereby attests under penalty of perjury that  
3 concurrence in the filing of this document has been obtained from the signatory indicated by the  
4 “conformed” signature (/s/) of registered ECF User Mark Tung (Bar No. 245782).

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7                   */s/ John M. Neukom*

8                   John M. Neukom (Bar No. 275887)

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